



Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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Manufacturers' Machinery and Equipment Exemption — Manufacturing Site

The Department has issued a series of Excise Tax Advisories (ETAs) to address questions regarding the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565, commonly referred to as the manufacturers' machinery and equipment exemption (M&E exemption). This advisory, ETA 2012-6S, is issued to address the application of the M&E exemption to activities taking place away from the manufacturing site. Please refer to ETA 2012.08.12.13601 for a current list of the issues covered by this series.

Questions have been raised regarding whether, and to what extent, the M&E exemption includes a requirement that qualifying activity take place at a manufacturing site.

The M&E statute provides an exemption from tax for machinery and equipment "used directly in the manufacturing operation." The phrase "manufacturing operation" is defined as "the manufacturing of articles, substances, and commodities for sale as tangible personal property." The M&E statute also describes the manufacturing operation in terms of a process, with a beginning and an end, taking place at a location. The statutory definition of "manufacturing operation" provides in part, "a manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site."

The definition of "testing operation" has similar language. The definition of "research and development operation" does not have any language regarding site.

Under the statute, machinery and equipment must be "used directly" in a manufacturing operation in order to be eligible for the exemption. There are eight used directly tests. They are:

- (1) Acts upon or interacts with an item of tangible personal property;
- (2) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;
- (3) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

Advisories numbered as 2 plus three digits (e.g. 2002.16.179) are advisories issued on or after July 2, 1998.

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- (4) Provides physical support for or access to tangible personal property;
- (5) Produces power for, or lubricates machinery and equipment;
- (6) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;
- (7) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or
- (8) Is integral to research and development as defined in RCW 82.63.010.

At the Site or Away from the Site

If an activity comes under the “used directly” test of “[c]ontrols, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site” then no part of the activity need take place at the site. The activity described above, meaning the controlling or guiding, and so forth of tangible personal property, must be performed within the scope of the “manufacturing operation.” The “manufacturing operation” begins with raw materials and ends with processed material. Therefore, an activity outside of this operation, such as design, does not qualify. See ETA 2012-5S for a discussion of design.

All of the other “used directly” tests require that the machinery and equipment and the activity in question be located/performed at a manufacturing site.

What is a Site

A site is one or more immediately adjacent parcels of real property. The ownership status of the property is not relevant – a parcel can be owned, rented, or leased by the manufacturer or processor for hire. Adjacent parcels of real property separated only by a public road comprise a single “site.” The public road dividing the site is an incidental separation of what would otherwise be one site.